IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 24250 of 2003

Between:

Visaka Cooperative Dairy Employees Union, Regd.No.453/79, Opp.B.H.P.V., Visakapatnam, rep. by its General Secretary Smt. D.Sarada W/o Sri Ch.Narsing Rao, aged about 50 years, R/o. 502, Seetha Apartments, Bhanu Nagar, Visakapatnam.

..... PETITIONER

AND

1 Sri Vijaya Visaka District Milk Producers Mutually Aided Cooperative Union

Limited, Visakapatnam - 530 012, rep. by its Managing Director.
2 The Government of A.P., Rep.by its Deputy Commissioner of Labour and

conciliation Officer, Visakapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of writ of MANDAMUS or any other appropriate writ declaring the action of the respondents in proposing to increase of office timings from 6 1/2 hours to 8 hours w.e.f. 24-11-2003 vide proceedings dated 4-11-2003 is illegal and contrary to section 33 of the Industrial Disputes Act consequently restrain the respondents from effecting change of office timings till the conclusion of Industrial Dispute.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondent No.1: P.B.VIJAY KUMAR

Counsel for the Respondent No.2: GP FOR LABOUR

The Court made the following :

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ORDER:

Heard both sides and at their request the main writ petition itself is taken up for disposal.

The petitioner, which is an employees union, filed this Writ Petition, inter alia, seeking Writ of Mandamus challenging the action of the respondents in proposing to increase the working hours from 6 ½ hours to 8 hours with effect from 24-11-2003 vide impugned proceedings dated 04-11-2003 as illegal and contrary to Section 33 of the Industrial Disputes Act.

The case of the petitioner is that having regard to the fact that as wages already fixed for the work duration of 6 ½ hours, the impugned action to increase the working hours without there being any increase in wages is totally unsustainable and further it also violates the provisions of the Section 9(A) of the Industrial Disputes Act and in the absence of any proper procedure followed thereunder, the impugned action is totally vitiated. It is further pointed out that the impugned notice was issued not in terms of the mandate as contained under Section 9(a) of the Industrial Disputes Act.

The learned Counsel for the respondents herein apart from contesting the petitioner's case, it is pointed out that the very writ petition as has been framed under article 226 of the Constitution of India is not maintainable against the respondents, since the respondent-organisation is a cooperative society functioning under the provisions of A.P.M.A.C.S. Act, which is not amenable to the jurisdiction of this Court under Article 12 of the Constitution of India and further there is absolutely no justification in the claim made by the petitioner. Hence, they sought dismissal of the Writ Petition.

Having considered the submissions made and on perusal of the material it is seen that the main question, which falls for consideration, is whether the respondents

followed the procedure as contemplated under the provisions of the Industrial Disputes Act both under 9-A and the 33 thereof. In view of the same, it is not necessary to go into the main objection raised as to the maintainability of the Writ Petition under Article 226 of the constitution of India as against the respondents herein and leaving open such question to be decided in a proper course, it would suffice in the interest of justice to set aside the impugned action with liberty to the respondents to follow the procedure as contemplated under the law.

The Writ Petition is, accordingly, allowed. However, it is open for the respondents to initiate the proceedings afresh in terms of the mandate as contemplated under the law. No costs.

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B.PRAKASH RAO, J.

Dated 07-12-2004.

skmr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Tuesday, the Seventh Day of December Two Thousand and Four.

..... REGISTRAR

To

1 The Managing Director, Sri Vijaya Visaka District Milk Producers Mutually

Aided Cooperative Union Limited, Visakapatnam - 530 012,.

2 The Deputy Commissioner of Labour and

Conciliation Officer, Government of A.P., Visakhapatnam.

3. 2CCs to G.P. for Labour, High Court Buildings, Hyderabd(OUT).

4. 2CD copies